

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**Civil Writ Petition 17199 of 2006**

Date of decision: 31.10.2006.

MP Kaura

...Petitioner

Versus

State of Punjab and ors

...Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr BM Singh, Advocate for the petitioner.

The petitioner has been working as Lecturer in Political Science in the DAV College, Jalandhar City (College – for short) since 1971. During the course of last 35 years of service, he has held various positions of Registrar and Deputy Controller of Examinations in the said College. Besides, he has served on various Committees. In terms of order dated 22.3.2005 (Annexure P1), the petitioner was placed under suspension. The General Secretary of the DAV College Managing Committee, New Delhi informed the petitioner that the President, DAV College Managing Committee, in view of the powers vested in him, vide resolution No.45 dated 17.8.1975 of DAV College Managing Committee, has placed him under suspension with immediate effect. The said order dated 22.3.2005 (Annexure P1) is assailed in this petition under Articles 226/227 of the Constitution of India.

Dr BM Singh, Advocate, learned counsel for the petitioner has contended that the College is affiliated to the Guru Nanak Dev University, Amritsar (respondent-3). Besides, the College is in receipt of 95% grant-in-aid

from the State Government. It is covered by the provisions of Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (Act – for short) and the rules framed there under. It is submitted that under the Act, the College is to be managed by a statutory Managing Committee called the Governing Body (respondent-4) in the University Calendar. The said Governing Body (respondent-4) is under the control of the State Government and the University (respondent-3) and the control is deep and pervasive. A reference has been made to the provisions of Section 2(d) of the Act which defines the Managing Committee. Besides, reference has been made to Ordinances 12 and 13 of the University (respondent-3). In terms of Ordinance 13, it is contended that it is only in case of moral turpitude of misconduct that the Governing Body which is a statutory body has the right to suspend an employee with immediate effect. The DAV College Managing Committee (respondent-5), it is contended is a non-statutory body on which the State Government and the University (respondent-3) have no financial, functional or administrative control and, therefore, it is not an instrumentality of the State in terms of the judgment of the Supreme Court in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and ors* (2002)5 SCC 111. Therefore, it is contended that the suspension of the petitioner by the Managing Committee is without jurisdiction.

We have given our thoughtful consideration to the matter.

A perusal of the impugned order dated 22.3.2005 (Annexure P1) would show that the General Secretary of the DAV College Managing Committee has informed the petitioner that the President of DAV College Managing Committee, in view of the powers vested in him vide resolution No.45 dated 17.8.1975 of the DAV College Managing Committee, has placed the petitioner under suspension with immediate effect. The petitioner has not

produced or placed on record the resolution No.45 dated 17.8.1975 in terms of which powers are stated to have been vested in the President of the DAV College Managing Committee. For non-production of the said resolution, an adverse interference is to be drawn against the petitioner and it is to be taken that the President of the Managing Committee has the powers in terms of the aforesaid resolution to place the petitioner under suspension.

The Managing Committee has been defined in Section 2(d) of the Act, which reads as under:-

“2(d) ‘**Managing Committee**’ means the Managing Committee of an affiliated college and includes a person or body of persons for the time being entrusted with the management of the affairs of an affiliated college.”

A perusal of the above shows that the Managing Committee means the Managing Committee of an affiliated College and includes a person or a body of persons for the time being entrusted with the management and affairs of the affiliated college. In the absence of aforesaid resolution No.45 being not produced, it cannot be said that the President of the DAV College Managing Committee does not have the power to place the petitioner under suspension and is not a part of the entrustment with the management of the affairs of the College. The reference to Ordinances 12 and 13 of the University (respondent-3) is also out of context and it is not shown as to how the said Ordinances of the University would apply to a College. Even otherwise, the order of suspension from service in respect of the petitioner is not shown to have been passed as a measure of punishment, which may have necessitated the interference of this Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution of India. The Supreme Court in **LK Verma v. HMT Ltd and anr** (2006)2 SCC 269 has held that suspension is of three kinds.

An order of suspension may be passed by way of punishment in terms of the conduct rules. An order of suspension can also be passed by the employer in exercise of its inherent power in the sense that it may not take any work from the delinquent officer but in that event, the entire salary is required to be paid. An order of suspension can also be passed, if such a provision exists in the rule laying down that in place of the full salary, the delinquent officer shall be paid only the subsistence allowance specified therein. In the case in hand, a perusal of the order suspending the petitioner shows that he would be paid subsistence allowance at half pay subject to providing non-employment certificate every month to the Principal to the effect that he is not engaged in any other employment, business, profession or vocation. Therefore, the order of suspension calls for no interference and in the face of not producing on record the resolution No.45 dated 17.8.1975, it is to be taken that it has been passed in accordance with the rule laying down that in place of full salary the petitioner would be paid only subsistence allowance.

Learned counsel for the petitioner has also contended that the provisions of Section 2-B (2) of the Act which provides that no employee shall be kept under suspension for a period of 6 months without prior approval of the Secretary to Government of Punjab, Department of Education, have rendered the suspension illegal and on expiry of the 6 months from the date of suspension i.e. 22.3.2005 on 21.9.2005, has made the petitioner liable for reinstatement.

In this respect, it may appropriately be noticed that an order of suspension after a period of 6 months does not become nonest giving automatic right of reinstatement in service to the petitioner. In **Government of Andhra Pradesh v. V.Sivaraman** AIR 1990 SC 1157, it was held that where rule provides for suspending a civil servant and requires the authority to report

the matter to the government giving out reasons for not completing the investigations or inquiry within 6 months, it would be for the government to review the case but it does not mean that the suspension beyond 6 months become automatically invalid or nonest. The only duty enjoined by the said rule is that the officer who made the order of suspension must make a report to the government and it would be for the government to review the facts and circumstances of the case to make a proper order. It is open to the government to make an order revoking the order of suspension or for the continuation of the suspension. The order of suspension, however, continues until it is revoked in accordance with law. Therefore, the petitioner may, if so advised, approach the government bringing to its notice that the approval of the Secretary to Government in terms of Section 2-B (2) of the Act has not been taken but mere failure to bring the said fact to the notice of the government would not invalidate the suspension that has been passed against the petitioner.

In the circumstances, there is no merit in this petition and consequently the same is dismissed.

(S.S.NIJJAR)
ACTING CHIEF JUSTICE

31.10.2006.
ASR

(S.S.SARON)
JUDGE